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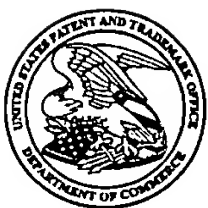
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

Application Number: 09/854,306
Filing Date: May 11, 2001
Appellant(s): YANG ET AL.

NOV 1 5 2007

GROUP 3600

Christian A. Nicholes
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 3, 2007 appealing from the Office

action mailed February 1, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. However, appellant has broken the rejections into five (5) separate rejections instead of the two (2) rejections presented in the Final Office Action. The grounds of rejection to be reviewed on appeal as set forth in the Final Office Action of February 1, 2007 are:

1.   Claims 1-17, 19, 22-49, 51, 55-64, 72-88, 90, 93-120, 122, and 126-135 are rejected under 35 U.S.C. 102(e) as being anticipated by Ginter et al (US 2004/0133793) (hereinafter referred to as Ginter).

2.   Claims 18, 20-21, 50, 52-54, 65-71, 89, 91-92, 121, 123-125 and 136-142 are

rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2004/0133793	GINTER et al.	7-2004
2003/0126033	EVANS et al.	7-2003
2003/0040917	FIEDLER	2-2003
3,571,670	GRODNER et al.	8-1973

Earthweb discontinues its ITKnowledge electronic book service, Information

Intelligence Online Libraries and Microcomputers, March 2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under
section 122(b), by another filed in the United States before the invention by the
applicant for patent or (2) a patent granted on an application for patent by
another filed in the United States before the invention by the applicant for patent,
except that an international application filed under the treaty defined in section

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-17, 19, 22-49, 51, 55-64, 72-88, 90, 93-120, 122, and 126-135 are rejected under 35 U.S.C. 102(e) as being anticipated by Ginter et al (US 2004/0133793) (hereinafter referred to as Ginter).

Referring to Claims 1 and 72:

Ginter discloses a computer implemented method and medium for managing a contract (*[0012] under VDE, such an extended agreements may comprise an electronic contracts [0053]*), comprising:

receiving, over a network, from a client/user computer that runs a browser (*[0989][1892] [2238] user may either make use of a standard application program (e.g. World Wide Web browser); browsing interface [2196]*), an inquiry regarding licensing of a first set of software under a particular contract *[0007-0008] Electronic content [0012] electronic contract, [0053] VDE can enable a very broad variety of electronically enforced commercial and societal agreements. These agreements can include electronically implemented contracts, licenses, laws, regulations, and tax collection; [0078-0081] Electronic content [0093], [0161-0162], Figures 72A-72D, [0137] content providers who employ the present invention may include software applications [0425] the "events" may include, for example, a **request to use content or generate a usage permission;** a common example of this type of negotiation today is the purchase of software under the terms of a "shrink-wrap license"; [1947] an electronic contract is an*

electronic form of an agreement including rights, restrictions, and obligations of the

parties to the agreement. In many cases, electronic agreements may surround the use

of digitally provided content; for example, a license to view a digitally distributed

movie);

in response to receiving the inquiry, accessing, at a management system

coupled to the client/user computer via a network (Figure 1), information pertaining to

the contract, the information comprising quota parameters which specifies a quota of

resources that can be consumed under the contract *(Figure 2A Rules and controls,*

*Figures 5A and 5B **Permissions record** (808) [0161-0162] parameters [0166] metering*

the number of copies, Figures 3 and 4, [0214],[0426-0433]);

determining a first licensing (subsets or extended agreements) amount

attributable to licensing the first set of software *([0012][0405] how much it costs to use*

the content, [0410-0411] specify how much it costs[0426-0431], Figure 26A (944)

number of rights record, Figure 50d (1718));

updating the quota parameter based, at least partially, upon the first licensing

amount *(Figure 61 (2239) update Meter, [0393])* ;

sending license terms/parameters/rules over a network to a licensing host that is

coupled to said management system via the network (Figure 1) and communicates with

the first set of software and enforces the license terms/parameters/rules relative to the

first set of software over the network (Figure 1, Figure 77, [0083] [0093] [0162-01634]);

and

allowing the first set of software to be used under the contract *(Figure 3 (402)*

GO, [0061-0062] distribution of permissions to use electronic information).

Referring to Claims 23 and 94:

Ginter discloses a computer implemented method and medium for managing a

contract *([0012] under VDE, such an extended agreements may comprise an electronic*

contracts [0053])), comprising:

receiving, over a network from a user/client computer that runs a browser

program ([0989][1892] [2238] user may either make use of a standard application

program (e.g. World Wide Web browser browsing interface [2196]), at a management

system coupled to the client computer via a network (Figure 1) a first inquiry regarding

licensing of a first set of software under a particular contract *[0007-0008] Electronic*

content [0012]·electronic contract, [0053] VDE can enable a very broad variety of

electronically enforced commercial and societal agreements. These agreements can

include electronically implemented contracts, licenses, laws, regulations, and tax

collection; [0078-0081] Electronic content [0093], [0161-0162], Figures 72A-72D, [0137]

content providers who employ the present invention may include software applications

[0425] the "events" may include, for example, a **request to use content or generate a**

usage permission; *a common example of this type of negotiation today is the*

purchase of software under the terms of a "shrink-wrap license"; [1947] an electronic

contract is an electronic form of an agreement including rights, restrictions, and

obligations of the parties to the agreement. In may cases, electronic agreements may

surround the use of digitally provided content; for example, a license to view a digitally

distributed movie);

in response to receiving the inquiry at the management system, accessing

information pertaining to the contract, the information comprising quota parameter which

specifies a quota of resources that can be consumed under the contract, and one or

more contract terms associated with the contract *(Figure 2A Rules and controls,*

*Figures 5A and 5B **Permissions record** (808) [0161-0162] parameters [0166] metering*

the number of copies, Figures 3 and 4, [0214],[0426-0433]);

determining a first licensing amount (subsets or extended agreements)

attributable to licensing the first set of software, said licensing amount determined, at

least partially, by applying one or more of the contract terms *([0012], [0174] VDE*

control information (including budgeting, pricing, and metering) can be configured so

that it can specifically apply, as appropriate, to ad hoc selection of different,

unanticipated variable user selected aggregations of information increments and pricing

levels can be, at least in part, based on quantities and/or nature of mixed increment

selections [0405] how much it costs to use the content, [0410-0411] specify how much it

costs, [0426-0431]; Figure 26A (944) number of rights record; Figure 50d (1718; [2319-

2321);

updating the quota parameter based, at least partially, upon the first licensing

amount *(Figure 61 (2239) update Meter, [0393]);*

sending license terms/parameters/rules from the management system over a

network to a licensing host that communicates with the first set of software and enforces

the license terms relative to the first set of software (Figure 77, [0083] [0093] [0162-

01634); and

allowing the first set of software to be used under the contract *([0062] Figure 3*

(402) GO).

Referring to Claims 56-64 and 127-135:

Ginter discloses a computer implemented method and medium for managing a

contract *([0012] under VDE, such an extended agreements may comprise an electronic*

contracts [0053]), comprising:

receiving, over a network, from a client/user computer that runs a browser

program ([0989][1892] [2238] user may either make use of a standard application

program (e.g. World Wide Web browser; browsing interface [2196]) at a management

system, an inquiry regarding licensing of a first set of software under a particular

contract *[0007-0008] Electronic content [0012] electronic contract, [0053] VDE can*

enable a very broad variety of electronically enforced commercial and societal

agreements. These agreements can include electronically implemented contracts,

licenses, laws, regulations, and tax collection; [0078-0081] Electronic content [0093],

[0161-0162], Figures 72A-72D, [0137] content providers who employ the present

invention may include software applications [0425] the "events" may include, for

example, a **request to use content or generate a usage permission;** *a common*

example of this type of negotiation today is the purchase of software under the terms of

a "shrink-wrap license"; [1947] an electronic contract is an electronic form of an

agreement including rights, restrictions, and obligations of the parties to the agreement.

In may cases, electronic agreements may surround the use of digitally provided

content; for example, a license to view a digitally distributed movie);

in response, accessing information from the management system pertaining to

the contract, the information comprising quota parameters which specifies a quota of

resources that can be consumed under the contract *(Figure 2A Rules and controls,*

*Figures 5A and 5B **Permissions record** (808) [0161-0162] parameters [0166] metering*

the number of copies, Figures 3 and 4, [0214],[0426-0433]);

accessing one or more other sets of information at the management system

pertaining to one or more other contracts related to the contract ([0012] and [0161-

0162]), each of the other sets of information comprising one or more contract terms

associated with one of the contracts (Figures 3-4, [0061] [0077-0081];

processing the information in a particular order and searching as each set of

information is processed to derive one or more applicable contract terms that apply to

the inquiry by reconciling the information to extract one or more applicable contract

terms and upon finding a contract term that applies, including the term as one or more

applicable contract terms *[0061- 0067] a rights application under VDE is made up of*

special purpose pieces, each of which can correspond to one or more basic electronic

*processes needed for a rights protection environment. These **processes can be***

***combined together like building blocks** to create electronic agreements that protect*

these rights, [0254] seniority of contributed control information [1209-1213] PERCs 808

are organized as a hierarchical structure, [0249-0255]).

determining a first licensing amount attributable to licensing the first set of software, said licensing amount determined, at least partially, by applying one or more of the contract terms *([0012], [0405] how much it costs to use the content, [0410-0411 specify how much it costs, [0426-0431]; Figures 3 and 4 Figure 26A (944) number of rights record; Figure 50d (1718))*;

updating the quota parameter based, at least partially, upon the first licensing amount *(Figure 61 (2239) update Meter, [0393])*;

sending license terms/rules/parameters over a network to a licensing host that communicates with the first set of software and enforces the license terms relative to the first set of software (Figure 77, [0083] [0093] [0162-01634); and

allowing the first set of software to be used under the contract *([0062] Figure 3 (402) GO)*.

Referring to Claims 2, 5-10, 24, 29-37, 73, 76-81, 95, and 100-108:

Ginter discloses a method and medium further comprising:

receiving a second inquiry regarding licensing a second set of software, or obtaining a service comprising technical support, or purchasing a product under the contract or a set of property comprising intellectual property or proprietary information ([0017 electronic information products [0025] electronic products [0046-0052] [0071] [0093] [0161-0162] [0174]);

determining a second licensing amount, service amount, purchasing amount attributable to licensing the second set of software, obtaining the services, purchasing the product, or licensing the property, by applying one or more contract terms *([0012],*

[0405] how much it costs to use the content, [0410-0411 specify how much it costs,

[0426-0431]; Figure 26A (944) number of rights record; Figure 50d (1718));

updating the quota parameter based, at least partially, upon the second licensing

amount, service amount, purchasing amount *(Figure 61 (2239) update Meter, [0393])*;

and

allowing the second set of software to be used under the contract, the service to

be rendered, the product to be purchased, or the property used *([0062] Figure 3 (402)*

GO).

Referring to Claims 3, 25, 74, and 96:

Ginter discloses wherein the first set of software and the second set of software

are different sets of software ([0012], [0061][0107] [0161], also see [2320]).

Referring to Claim 4, 26, 75, and 97:

Ginter discloses upgrades in paragraph [0649].

Moreover, the fact that the second set of software is an upgraded version of the

first set of software is determined to be non-functional descriptive data since the method

would be performed the same no matter whether the software was an upgrade or not.

The type of software is not functionally interrelated with the steps of the invention and

thus this descriptive material will not distinguish the claimed invention from the prior art

in terms of patentability. See *In re Gulack*, 217 USPQ 401 (CAFC 1983), *In re Lowry*,

32 USPQ2d 1031 (CAFC 1994).

Referring to Claims 11, 41, 82, and 112:

Ginter discloses wherein updating the quota parameter comprises reducing the

parameter by the first licensing amount *(Figures 3 and 4 Figure 61 (2239) update Meter,*

[0393], [0161]).

Referring to Claims 27-28 and 98-99:

Ginter discloses wherein the one or more contract terms applied to determine the

first licensing amount are the same as/different from the one or more contract terms

applied to determine the second licensing amount *([0061- 0067] a rights application*

under VDE is made up of special purpose pieces, each of which can correspond to one

or more basic electronic processes needed for a rights protection environment. These

processes can be combined together like building blocks *to create electronic*

agreements that protect these rights, [0254] seniority of contributed control information

[1209-1213] [0161-0163] agreement may also result from an automated electronic

process during which terms and conditions are "evaluated" by certain VDE participant

control information that accesses whether certain other electronic terms and conditions

attached to content and/or submitted by another party are acceptable; such an

evaluation process may be quite simple, for example a comparison to ensure

compatibility [0161] VDEF capabilities "evolve" to reflect the requirements of one or

more successive parties; [0163] VDE participants directly, through a user interface

means, resolve "disagreements" between control information [0164] another party

(other than the first applier of rules), perhaps through a negotiation process, accepts,

and or adds to and/or modifies, "in place" content control information, a VDE agreement

between two or more parties related to the use of such electronic content by be created

[0249] the control information can determine for example how and/or to whom electronic content can be provided).

Referring to Claims 12-16, 42-46, 48, 83-87, 113-117, and 119:

Ginter discloses wherein the first inquiry specifies one or more additional inquiry parameters and wherein the amount is determined based, at least partially, upon at least one of the additional inquiry parameters (*[0214] flexible metering, enables such flexibility of metering control mechanisms to accommodate different parameters [0055] [0108] allows electronic commerce participants to freely stipulate their business requirements and trade-offs)* wherein the parameter is specified by the sender of the inquiry and wherein the one or more parameters comprises indicating a desired amount of time or duration of the license, how may users may concurrently use the software, how may copies of the software are desired (*[0111] VDE can further be used to enable commercially provided electronic content to be made available to users in user defined portions).*

Referring to Claims 17, 49, 88, and 120:

Ginter discloses granting a license to use the item for a period of time (Figure 26A Expiration date/time for this record (932) [0189], [0190], [0196-0197], [216]).

Referring to Claims 19, 51, 90, and 122:

Ginter discloses disallowing use of the item under the contract *(Figure 3 (402) NO GO).*

Referring to Claims 22, 55, 93 and 126:

Ginter discloses receiving a request to deploy the software and deploying the software to a host specified by a sender ([0032-0035], [0061-0062]).

Referring to Claims 38-40, and 109-111:

Ginter discloses wherein the one or more contract terms comprise an uplift, a discount or a multiplier ([0174] discounted by 15% [0186-0190] pricing discounts).

Referring to Claims 47 and 118:

Ginter discloses wherein the first inquiry specifies a set of inquiry parameters, which include a reference to the first set of software and one or more additional inquiry parameters, and wherein determining the licensing amount comprises determining, based at least partially upon one or more of the inquiry parameters which of said one or more contract terms to apply to the first inquiry (*[0061- 0067] a rights application under VDE is made up of special purpose pieces, each of which can correspond to one or more basic electronic processes needed for a rights protection environment. These* **processes can be combined together like building blocks** *to create electronic agreements that protect these rights, [0254] seniority of contributed control information [1209-1213] [0161-0163] agreement may also result from an automated electronic process during which terms and conditions are "evaluated" by certain VDE participant control information that accesses whether certain other electronic terms and conditions attached to content and/or submitted by another party are acceptable; such an evaluation process may be quite simple, for example a comparison to ensure compatibility [0161] VDEF capabilities "evolve" to reflect the requirements of one or more successive parties; [0163] VDE participants directly, through a user interface*

means, resolve "disagreements" between control information [0164] another party

(other than the first applier of rules), perhaps through a negotiation process, accepts,

and or adds to and/or modifies, "in place" content control information, a VDE agreement

between two or more parties related to the use of such electronic content by be created

[0249] the control information can determine for example how and/or to whom electronic

content can be provided)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed
> or described as set forth in section 102 of this title, if the differences between the
> subject matter sought to be patented and the prior art are such that the subject
> matter as a whole would have been obvious at the time the invention was made
> to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was
> made.

Claims 18, 20-21, 50, 52-54, 65-71, 89, 91-92, 121, 123-125 and 136-142 are

rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter.

Referring to Claims 18, 20-21, 50, 52-54, 65-71, 89, 91-92, 121, 123-125 and

136-142:

Ginter discloses a computer-implemented method and medium for managing a

contract ([0012] electronic contract), comprising:

receiving, over a network, from a client computer that runs a browser program

([0989][1892] [2238] user may either make use of a standard application program (e.g.

World Wide Web browser browsing interface [2196]), at a management system, a

communication [2196];

accessing information pertaining to the license, the information comprising a

reference to a contract with one or more contract terms under which the license was

granted, the contract having quota parameters associated therewith which specify a

quota of resources that can be consumed under the contract; the information to the

license further comprising a licensing amount attributable to the licensing of the

software (*[0007-0008] Electronic content [0012] electronic contract, [0053] VDE can*

enable a very broad variety of electronically enforced commercial and societal

agreements. These agreements can include electronically implemented contracts,

licenses, laws, regulations, and tax collection; [0078-0081] Electronic content [0093],

[0161-0162], Figures 72A-72D, [0137] content providers who employ the present

invention may include software applications [0425] the "events" may include, for

*example, a **request to use content or generate a usage permission;** a common*

example of this type of negotiation today is the purchase of software under the terms of

a "shrink-wrap license"; [1947] an electronic contract is an electronic form of an

agreement including rights, restrictions, and obligations of the parties to the agreement.

In may cases, electronic agreements may surround the use of digitally provided content;

for example, a license to view a digitally distributed movie).

determining a first licensing (subsets or extended agreements) amount

attributable to licensing the first set of software *([0012][0405] how much it costs to use*

the content, [0410-0411] specify how much it costs[0426-0431], Figure 26A (944)

number of rights record, Figure 50d (1718));

sending license terms/parameters/rules over a network to a licensing host that

communicates with the first set of software and enforces the license terms relative to

the first set of software (Figure 77, [0083] [0093] [0162-01634]); and

Ginter discloses usage auditing, reporting, and payment [0078]. Ginter does not

disclose receiving a request to terminate a license, determining a refund amount and

updating the quota parameter based upon the refund.

However, customer service is a key factor in the success of any business. One

way to keep customers satisfied to provide refunds for unused portions or providing

credits for the unused portion. This practice of giving a customer a refund for unused

portions is an old and well established business practice, for example, when a customer

is dissatisfied with the product and wants to return the product. The practice is

designed to keep customers returning for services as shown in the following references

submitted as evidence of examples of a refund after termination of a license for

software in the Office action dated August 11, 2006.

1. EarthWeb provided ITKnowledge electronic book (ebook) services.

EarthWeb discloses that they will ***fully reimburse*** licensees for ***unused portions*** of the

license.

2. US 2003/0040917 discloses that the browser application will allow listeners to listen to netcasts. In addition to single payments at the time of downloading, subscription arrangements may allow a predetermined number of downloads within a predetermined period of time (**with or without the possibility of refunds or rebates for unused opportunities** [paragraph [0122]).

3. US 2003/0126033 discloses once software is returned, a value is put on the returned along with full refunds, partial refunds, or no refund [0193] [0282].

Even as far back as 1971, a subscription communication system discloses in patent number 3,751,670 (Grodner et al) discloses an economically sound basis for the broadcaster to discontinue charging fro the remainder of the program.

Therefore, it would have been obvious to one of ordinary skill in the art to incorporate into the contract management method and medium disclosed in Ginter a refund mechanism since it makes good business sense to provide a credit for unused portions so as to maintain customer satisfaction and loyalty, thus generating return business.

(10) Response to Argument

A. The Features of Claims 1-17, 19, 22, 72-88, 90, and 93 Are Not Disclosed, Taught, or Suggested by Ginter

Appellant states that Ginter does not disclose, among other features, that a licensing host communicates with a first set of software over the network. The Examiner respectfully disagrees for the reasons set forth below:

MPEP 2111 requires that the Examiner give claim limitations the broadest reasonable interpretation consistent with the supporting description without reading limitations into the claims.

Claim 1 is directed to a method for managing a contract, comprising,

Step 1 - receiving, over a network, from a client computer that runs a browser program, a first inquiry **regarding** licensing of a first set of software under a particular contract (Broadly read, this is a step of receiving from a computer an inquiry **regarding** licensing over the Internet. Information **regarding** "licensing of a first set of software under a particular contract" is a broad concept, encompassing all types of information. For example, the inquiry could simply be an inquiry as to whether one carries software or whether one has a contract available or any contracts available. It could be an inquiry asking how much it cost to license software.)

Step 2 - in response to receiving the inquiry, accessing at a management system that is coupled to said client computer via said network and embodied in a machine, information **pertaining** to said contract, said information comprising quota parameter, which specifies a quota of resources that can be consumed under said particular contract (Broadly read, this is a step of, in response to the inquiry, accessing a system via the Internet that contains quota information pertaining to the contract. Once again, the claim language does not require the contract itself to be accessed, only information pertaining to the contract which is any kind of information, wherein this information includes quota parameter information. Therefore, the claim language does not require

that the quota parameter information be accessed, only that information pertaining to the contract be accessed);

Step 3 - determining, at said management system, a first licensing amount attributable to licensing said first set of software (Broadly read, determining at the system a first licensing cost);

Step 4 - updating said quota parameter at said management system based, *at least partially*, upon first licensing amount (Broadly read, updating quota information based, at least in part, upon the first licensing amount which "licensing amount" could be anything. This is not defined in the claim limitations as being a quota or a price);

Step 5 - sending license parameters from the management system over said network to a licensing host that is coupled to said management system via said network and communicates with the first set of software over said network and enforces said license parameters relative to said first set of software (Broadly read, this limitation is simply sending parameters via a network (the Internet) from a system to a licensing host that has the ability to communicate with the software over the Internet and that has the ability to enforce the parameters (While appellant states that the licensing host is coupled to the management system and communicates with the first set of software over a network and enforces license parameters, appellant has not positively claimed the step of communicating with the first set of software or enforcing the parameters);

Step 6 - *allowing* said first set of software to be used under said particular contract (Once again, allowing something to be used is not a positive recitation of actually using the software. Allowing the software to be used means that no one is

stopping the software from being used. Moreover, since the appellant does not identify who or what is allowing the software to be used, it could be anyone or anything).

The Examiner further notes, as to claim 1, that the claim limitations never link or incorporate the information gathered in steps 3 and 4 with steps 5 or 6.

The appellant states that claim 1 recites that a licensing host communicates with said first set of software and that the first set of software according to claim 1 must be the same set of software that a client's licensing inquiry regards. Appellant states that if Ginter's VDE content creator 102 and/or VDE rights distributor do not communicate over a network with a set of software that a client's licensing inquiry regards under a particular contract, then Ginter does not disclose a licensing host that "communicates with said first set of software over said network". Appellant further states that Ginter does not even disclose a licensing host as recited in claim 1 nor does Ginter disclose a management system embodied in a machine as recited in claim 1. Appellant further states that even if Ginter's approach has some features that seem similar to some features in claim 1, Ginter does not disclose the precise steps that are performed by the precise components in claim 1. The Examiner respectfully disagrees for the reasons set forth below.

The claim language identifies a management system as a system coupled to the client computer via a network and embodied in a machine (the Examiner asserts that this describes a computer) which provides information pertaining to contracts and quota parameters.

The appellant's claim language identifies the licensing host as communicating with the software over the network and enforcing the license parameters.

The appellant's specification further discloses:

[0027] The client 106 is the entity that is used by a customer to interact with the management system 102. Using the client 106, the customer may interact with the management system 102, for example, to browse a list of software available for licensing, submit an inquiry for a quote on a particular set of software, submit a request to carry out a transaction under a contract, and manage and deploy licenses that have been obtained. For purposes of the present invention, the client 106 may be any entity capable of communicating with the management system 102 via network 104. In one embodiment, the management system 102 is implemented in an Internet environment. In such an implementation, the client 106 may be a computer running a standard browser program 150.

[0028] Whereas the client 106 is used by a customer to select and license a set of software, the licensing host 108 and the software host 110 are used by a user to actually run the software (note: the user and the customer may be the same person or they may be different people). In one embodiment, the licensing host 108 runs a set of license management software 152. As will be explained further in a later section, the license management software 152 ensures that the terms of a license, once it is obtained from the management system 102, are enforced. For example, the license management software 152 makes sure that the number of users using a set of licensed software does not exceed the number specified in a license.

Ginter discloses an invention that relates to computer-based and other electronic application-based technologies that helps to ensure that information is accessed and/or used only in authorized way, and maintains the integrity, availability, and/or confidentiality of such information and process related to such use [0002]. The invention also relates to systems and techniques that manage, including meter and/or limits and/or monitors use of electronically stored and/or disseminated information [0004]. Electronic content is defined in paragraphs [0007-0008]. Ginter discloses that

the VDE "virtual distribution environment" [0011] can be used to protect the rights of

parties who create content such as, for example: records, games, movies,

newspapers, electronic books and reference materials, personal electric mail, etc.

[0025].

Ginter discloses:

[0071] Information distributed using VDE may take many forms. It may, for example, be "distributed" for use on an individual's own computer, that is the present invention can be used to provide security for locally stored data. Alternatively, VDE may be used with information that is dispersed by authors and/or publishers to one or more recipients. This information may take many forms including: movies, audio recordings, games, electronic catalog shopping, multimedia, training materials, E-mail and personal documents, object oriented libraries, *software programming resources*, and reference/record keeping information resources (such as business, medical, legal, scientific, governmental, and consumer databases).

[0137] Content providers who employ the present invention may include, for example, *software application* and game publishers, database publishers, cable, television, and radio broadcasters, electronic shopping vendors, and distributors of information in electronic document, book, periodical, e-mail and/or other forms. Corporations, government agencies, and/or individual "end-users" who act as storers of, and/or distributors of, electronic information, may also be VDE content providers (in a restricted model, a user provides content only to himself and employs VDE to secure his own confidential information against unauthorized use by other parties). Electronic information may include proprietary and/or confidential information for personal or internal organization use, as well as information, such as software applications, documents, entertainment materials, and/or reference information, which may be provided to other parties. Distribution may be by, for example, physical media delivery, broadcast and/or telecommunication means, and in the form of "static" files and/or streams of data. VDE may also be used, for example, for multi-site "real-time" interaction such as teleconferencing, interactive games, or on-line bulletin boards, where restrictions on, and/or auditing of, the use of all or portions of communicated information is enforced.

[0166] VDE ensures that certain prerequisites necessary for a given transaction

to occur are met. This includes the secure execution of any required load modules and the availability of any required, associated data. For example, required load modules and data (e.g. in the form of a method) might specify that sufficient credit from an authorized source must be confirmed as available. It might further require certain one or more load modules execute as processes at an appropriate time to ensure that such credit will be used in order to pay for user use of the content. A certain content provider might, for example, ***require metering the number of copies made for distribution to employees of a given software program*** (a portion of the program might be maintained in encrypted form and require the presence of a VDE installation to run). This would require the execution of a metering method for copying of the property each time a copy was made for another employee. This same provider might also charge fees based on the total number of different properties licensed from them by the user and a metering history of their licensing of properties might be required to maintain this information.

[0381] Almost any sort of transaction you can think of can be supported by virtual distribution environment 100. A few of many examples of transactions that can be supported by virtual distribution environment 100 include:

[0382] home banking and electronic payments;

[0383] ***electronic legal contracts***;

[0384] distribution of "content" such as electronic printed matter, video, audio, images and ***computer programs***

See also paragraph [0439] where Ginter sets forth that information content 304

could be the text of a novel, a picture, sound such as a musical performance or a

reading, a movie or other video, ***computer software, or just about any other***

kind of electronic information you can think of.

The Examiner asserts that clearly computer software is content anticipated by

Ginter.

As to the limitation of "licensing of a set of content under a particular contract",

Ginter discloses:

[0012] A fundamental problem for electronic content providers is extending their ability to control the use of proprietary information. Content providers often need to limit use to authorized activities and amounts. Participants in a business model involving, for example, provision of movies and advertising on optical discs may include actors, directors, script and other writers, musicians, studios, publishers, distributors, retailers, advertisers, credit card services, and content end-users. *These participants need the ability to embody their range of agreements and requirements, including use limitations, into an "extended" agreement comprising an overall electronic business model. This extended agreement is represented by electronic content control information that can automatically enforce agreed upon rights and obligations. Under VDE, such an extended agreement may comprise an electronic contract involving all business model participants. Such an agreement may alternatively, or in addition, be made up of electronic agreements between subsets of the business model participants.* Through the use of VDE, electronic commerce can function in the same way as traditional commerce--that is commercial relationships regarding products and services can be shaped through the negotiation of one or more agreements between a variety of parties.

[0053] VDE can enable a very broad variety of electronically enforced commercial and societal agreements. These agreements can include *electronically implemented contracts*, licenses, laws, regulations, and tax collection.

[0093] Electronic appliances under control of VDE represent VDE `nodes` that securely process and control; distributed electronic information and/or appliance usage, control information formulation, and related transactions. VDE can securely manage the integration of control information provided by two or more parties. *As a result, VDE can construct an electronic agreement between VDE participants that represent a "negotiation" between, the control requirements of, two or more parties and enacts terms and conditions of a resulting agreement. VDE ensures the rights of each party to an electronic agreement regarding a wide range of electronic activities related to electronic information and/or appliance usage.*

As to step 1, Ginter discloses receiving over a network from a client computer that runs a browser program a first inquiry regarding a first set of content, content including software as set forth above, under a particular contract as set forth below:

[0174] *support dynamic user selection of information* subsets of a VDE electronic information product (VDE controlled content). This contrasts with the constraints of having to use a few high level individual, pre-defined content provider information increments such as being required to select a whole information product or product section in order to acquire or otherwise use a portion of such product or section. VDE supports metering and usage control over a variety of increments (including "atomic" increments, and combinations of different increment types) that are selected ad hoc by a user and represent a collection of pre-identified one or more increments (such as one or more blocks of a preidentified nature, e.g., bytes, images, logically related blocks) that form a generally arbitrary, but logical to a user, content "deliverable." VDE control information (including budgeting, pricing and metering) can be configured so that it can specifically apply, as appropriate, to ad hoc selection of different, unanticipated variable user selected aggregations of information increments and pricing levels can be, at least in part, based on quantities and/or nature of mixed increment selections (for example, a certain quantity of certain text could mean associated images might be discounted by 15%; a greater quantity of text in the "mixed" increment selection might mean the images are discounted 20%). *Such user selected aggregated information increments can reflect the actual requirements of a user for information and is more flexible than being limited to a single, or a few, high level, (e.g. product, document, database record) predetermined increments.* Such high level increments may include quantities of information not desired by the user and as a result be more costly than the subset of information needed by the user if such a subset was available. *In sum, the present invention allows information contained in electronic information products to be supplied according to user specification. Tailoring to user specification allows the present invention to provide the greatest value to users, which in turn will generate the greatest amount of electronic commerce activity. The user, for example, would be able to define an aggregation of content derived from various portions of an available content product, but which, as a deliverable for use by the user, is an entirely unique aggregated increment* The user may, for example, select certain numbers of bytes of information from various portions of an information product, such as a reference work, and copy them to disc in unencrypted form and be billed based on total number of bytes plus a surcharge on the number of "articles" that provided the bytes. A content provider might reasonably charge less for such a user defined information increment since the user does not require all of the content from all of the articles that contained desired information. This process of defining a user desired information increment may involve artificial intelligence database search tools that contribute to the location of the most relevant portions of information from an information product and cause the automatic display to the user of

information describing search criteria hits for user selection or the automatic extraction and delivery of such portions to the user.

[0200] enables users, other value chain participants (such as clearinghouses and government agencies), and/or user organizations, *to specify preferences or requirements related to their use of electronic content and/or appliances.* Content users, such as end-user customers using commercially distributed content (games, information resources, software programs, etc.), can define, if allowed by senior control information, budgets, and/or other control information, to manage their own internal use of content. Uses include, for example, a user setting a limit on the price for electronic documents that the user is willing to pay without prior express user authorization, and the user establishing the character of metering information he or she is willing to allow to be collected (privacy protection). This includes providing the means for content users to protect the privacy of information derived from their use of a VDE installation and content and/or appliance usage auditing. In particular, VDE can prevent information related to a participant's usage of electronic content from being provided to other parties without the participant's tacit or explicit agreement.

[0425] The "events process" 402 detects things that happen ("events") and determines which of those "events" need action by the other "processes." *The "events" may include, for example, a request to use content or generate a usage permission.* Some events may need additional processing, and others may not. Whether an "event" needs more processing depends on the "rules and controls" corresponding to the content. For example, a user who lacks permission will not have her request satisfied ("No Go"). As another example, each user request to turn to a new page of an electronic book may be satisfied ("Go"), but it may not be necessary to meter, bill or budget those requests. A user who has purchased a copy of a novel may be permitted to open and read the novel as many times as she wants to without any further metering, billing or budgeting. In this simple example, the "event process" 402 may request metering, billing and/or budgeting processes the first time the user asks to open the protected novel (so the purchase price can be charged to the user), and treat all later requests to open the same novel as "insignificant events." Other content (for example, searching an electronic telephone directory) may require the user to pay a fee for each access.

The Examiner further asserts that Ginter discloses in response to receiving the

inquiry, accessing a management system that is coupled to the client computer via a

network and embodied in a machine, information pertaining to a particular contract, the

information comprising quota parameters, which specifies a quota of resources that

can be consumed under said contract.

The Examiner is interpreting the management system as being the system that

provides information pertaining to contracts, wherein the information comprises quotas,

as set forth in the appellant's claim language.

Ginter discloses:

[0085] To answer the developing needs of rights owners and content providers
and to provide a system that can accommodate the requirements and
agreements of all parties that may be involved in electronic business models
(creators, distributors, administrators, users, credit providers, etc.), VDE supplies
an efficient, largely transparent, low cost and sufficiently secure system
(supporting both hardware/software and software only models). **VDE** provides
the widely varying secure control and administration capabilities required for:

[0086] 1. Different types of electronic content,

[0087] 2. Differing electronic content delivery schemes,

[0088] 3. Differing electronic content usage schemes,

[0089] 4. Different content usage platforms, and

[0090] 5. Differing content marketing and model strategies.

[0389] For example, the video production studio 204 in the upper right-hand
corner of FIG. 1 may create video/television programs. Video production studio
204 may send these programs over lines 202, or may use other paths such as
satellite link 205 and CD ROM delivery service 216. Video production studio
204 can send the programs directly to consumers 206, 208, 210, **or it can send**

**the programs to information utility 200 which may store and later send
them to the consumers, for example. Consumers 206, 208, 210 are each
capable of receiving and using the programs created by video production
studio 204--assuming, that is, that the video production studio or
information utility 200 has arranged for these consumers to have
appropriate "rules and controls" (control information) that give the
consumers rights to use the programs.**

[0390] Even if a consumer has a copy of a video program, she cannot watch or
copy the program unless she has "rules and controls" that authorize use of the
program. **She can use the program only as permitted by the "rules and
controls."**

[0391] For example, video production studio 204 might release a half-hour
exercise video in the hope that as many viewers as possible will view it. The
video production studio 204 wishes to receive $2.00 per viewing. **Video
production studio 204 may, through information utility 200, make the
exercise video available in "protected" form to all consumers 206, 208, 210.
Video production studio 204 may also provide "rules and controls" for the
video. These "rules and controls" may specify for example:**

[0392] (1) any consumer who has good credit of at least $2.00 based on a credit
account with independent financial provider 212 (such as Mastercard or VISA)
may watch the video,

[0393] (2) virtual distribution environment 100 will *"meter"* each time a
consumer watches the video, and report usage to video production studio 204
from time to time, and

[0174] support dynamic user selection of information subsets of a VDE
electronic information product (VDE controlled content). This contrasts with
the constraints of having to use a few high level individual, pre-defined
content provider information increments such as being required to select a
whole information product or product section in order to acquire or otherwise
use a portion of such product or section. **VDE supports metering and usage
control over a variety of increments (including "atomic" increments, and
combinations of different increment types) that are selected ad hoc by a
user and represent a collection of pre-identified one or more increments
(such as one or more blocks of a preidentified nature, e.g., bytes, images,
logically related blocks) that form a generally arbitrary, but logical to a
user, content "deliverable." VDE control information (including budgeting,**

pricing and metering) can be configured so that it can specifically apply, as appropriate, to ad hoc selection of different, unanticipated variable user selected aggregations of information increments and pricing levels can be, at least in part, based on quantities and/or nature of mixed increment selections (for example, a certain quantity of certain text could mean associated images might be discounted by 15%; a greater quantity of text in the "mixed" increment selection might mean the images are discounted 20%). Such user selected aggregated information increments can reflect the actual requirements of a user for information and is more flexible than being limited to a single, or a few, high level, (e.g. product, document, database record) predetermined increments. Such high level increments may include quantities of information not desired by the user and as a result be more costly than the subset of information needed by the user if such a subset was available. **In sum, the present invention allows information contained in electronic information products to be supplied according to user specification. Tailoring to user specification allows the present invention to provide the greatest value to users, which in turn will generate the greatest amount of electronic commerce activity. The user, for example, would be able to define an aggregation of content derived from various portions of an available content product, but which, as a deliverable for use by the user, is an entirely unique aggregated increment** The user may, for example, select certain numbers of bytes of information from various portions of an information product, such as a reference work, and copy them to disc in unencrypted form and be billed based on total number of bytes plus a surcharge on the number of "articles" that provided the bytes. A content provider might reasonably charge less for such a user defined information increment since the user does not require all of the content from all of the articles that contained desired information. This process of defining a user desired information increment may involve artificial intelligence database search tools that contribute to the location of the most relevant portions of information from an information product and cause the automatic display to the user of information describing search criteria hits for user selection or the automatic extraction and delivery of such portions to the user.

Appellant identifies appellant's management system in the specification as

follows:

[0027] The client 106 is the entity that is used by a customer to interact with the management system 102. Using the client 106, **the customer may interact with the management system 102, for example, to browse a list of software available for licensing, submit an inquiry for a quote on a particular set of**

software, submit a request to carry out a transaction under a contract, and manage and deploy licenses that have been obtained.

The Examiner asserts that the above description of a management system is identified in Ginter as either, in addition to the VDE itself, an "Information utility" (shown in Figure 1 (200) [0389]), or a distributor/publishing house or redistributor or a content provider as set forth below:

[0404] In the FIG. 2 example, **a VDE content creator 102 creates "content." The content creator 102 may also specify "rules and controls" for distributing the content.** These distribution-related "rules and controls" can specify who has permission to distribute the rights to use content, and how many users are allowed to use the content.

[0405] **Arrow 104 shows the content creator 102 sending the "rules and controls" associated with the content to a VDE rights distributor 106 ("distributor")** over an electronic highway 108 (or by some other path such as an optical disk sent by a delivery service such as U.S. mail). The content can be distributed over the same or different path used to send the "rules and controls." **The distributor 106 generates her own "rules and controls" that relate to usage of the content. The usage-related "rules and controls" may, for example, specify what a user can and can't do with the content and how much it costs to use the content. These usage-related "rules and controls" must be consistent with the "rules and controls" specified by content creator 102.**

[0408] **The distributor 106 and the content creator 102 may be the same person, or they may be different people.** For example, a musical performing group may act as both content creator 102 and distributor 106 by creating and distributing its own musical recordings. As another example, **a publishing house may act as a distributor 106 to distribute rights to use works created by an author content creator 102.** Content creators 102 may use a distributor 106 to efficiently manage the financial end of content distribution.

[0409] The "financial clearinghouse" 116 shown in FIG. 2 may also be a **"VDE administrator."** Financial clearinghouse 116 in its VDE administrator role sends "administrative" information to the VDE participants. This administrative information helps to keep the virtual distribution environment 100 operating properly. The "VDE administrator" and financial clearinghouse roles may be

performed by different people or companies, and there can be more than one of each.

[1184] Meters and budgets are perhaps among the most common data structures in VDE 100. They are used to count and record events, and also to limit events. The data structures for each meter and budget are determined by the **content provider or a distributor/redistributor** authorized to change the information. Meters and budgets, however, generally have common information stored in a common header format (e.g., user ID, site ID and related identification information).

[1185] The **content provider or distributor/redistributor may specify data structures for each meter and budget UDE.** Although these data structures vary depending upon the particular application, some are more common than others. The following table lists some of the more commonly occurring data structures for METER and BUDGET methods

[0396] FIG. 1 also shows a **publishing house 214. Publishing house 214 may act as a distributor for an author** 206. The publishing house 214 may distribute rights to use "content" (such as computer software, electronic newspapers, the video produced by publishing house 214, audio, or any other data) to consumers such as office 210. The use rights may be defined by "rules and controls" distributed by publishing house 216. Publishing house 216 may distribute these "rules and controls" with the content, but this is not necessary. Because the content can be used only by consumers that have the appropriate "rules and controls," content and its associated "rules and controls" may be distributed at different times, in different ways, by different VDE participants. The ability of VDE to securely distribute and enforce "rules and controls" separately from the content they apply to provides great advantages.

[0397] Use rights distributed by publishing house 214 may, for example, permit office 210 to make and distribute copies of the content to its employees. Office 210 may act as a **redistributor** by extending a "chain of handling and control" to its employees. The office 210 may add or modify "rules and controls" (consistent with the "rules and controls" it receives from publishing house 214) to provide office-internal control information and mechanisms. For example, office 210 may set a maximum usage budget for each individual user and/or group within the office, or it may permit only specified employees and/or groups to access certain information.

The Examiner asserts that Ginter discloses determining at the management

system a first licensing amount attributable to licensing a first set of software and

updating the quota parameters of the management system based at least partially

upon said first license amount, as set forth below:

> [0174] support dynamic user selection of information subsets of a VDE
> electronic information product (VDE controlled content). This contrasts with
> the constraints of having to use a few high level individual, pre-defined
> content provider information increments such as being required to select a
> whole information product or product section in order to acquire or otherwise
> use a portion of such product or section. **VDE supports metering and usage
> control over a variety of increments (including "atomic" increments, and
> combinations of different increment types) that are selected ad hoc by a
> user and represent a collection of pre-identified one or more increments
> (such as one or more blocks of a preidentified nature, e.g., bytes, images,
> logically related blocks) that form a generally arbitrary, but logical to a
> user, content "deliverable." VDE control information (including budgeting,
> pricing and metering) can be configured so that it can specifically apply, as
> appropriate, to ad hoc selection of different, unanticipated variable user
> selected aggregations of information increments and pricing levels can be,
> at least in part, based on quantities and/or nature of mixed increment
> selections (for example, a certain quantity of certain text could mean
> associated images might be discounted by 15%; a greater quantity of text
> in the "mixed" increment selection might mean the images are discounted
> 20%).** Such user selected aggregated information increments can reflect the
> actual requirements of a user for information and is more flexible than being
> limited to a single, or a few, high level, (e.g. product, document, database record)
> predetermined increments. Such high level increments may include quantities of
> information not desired by the user and as a result be more costly than the
> subset of information needed by the user if such a subset was available. **In sum,
> the present invention allows information contained in electronic
> information products to be supplied according to user specification.
> Tailoring to user specification allows the present invention to provide the
> greatest value to users, which in turn will generate the greatest amount of
> electronic commerce activity. The user, for example, would be able to
> define an aggregation of content derived from various portions of an
> available content product, but which, as a deliverable for use by the user, is
> an entirely unique aggregated increment** The user may, for example, select
> certain numbers of bytes of information from various portions of an information
> product, such as a reference work, and copy them to disc in unencrypted form

and be billed based on total number of bytes plus a surcharge on the number of "articles" that provided the bytes. A content provider might reasonably charge less for such a user defined information increment since the user does not require all of the content from all of the articles that contained desired information. This process of defining a user desired information increment may involve artificial intelligence database search tools that contribute to the location of the most relevant portions of information from an information product and cause the automatic display to the user of information describing search criteria hits for user selection or the automatic extraction and delivery of such portions to the user.

The Examiner asserts that Ginter discloses sending license parameters from the management system over a network to a licensing host that is couple to the management system via a network and communicates with the software over the network and enforces said license parameters relative to the software and allows the software to be used under the contract, as set forth below:

> [0012] A fundamental problem for electronic content providers is extending their ability to control the use of proprietary information. Content providers often need to limit use to authorized activities and amounts. Participants in a business model involving, for example, provision of movies and advertising on optical discs may include actors, directors, script and other writers, musicians, studios, publishers, distributors, retailers, advertisers, credit card services, and content end-users. These participants need the ability to embody their range of agreements and requirements, including use limitations, into an "extended" agreement comprising an overall electronic business model. This extended agreement is represented by electronic content control information that can **automatically enforce agreed upon rights and obligations. Under VDE, such an extended agreement may comprise an electronic contract involving all business model participants**. Such an agreement may alternatively, or in addition, be made up of electronic agreements between subsets of the business model participants. Through the use of VDE, electronic commerce can function in the same way as traditional commerce--that is commercial relationships regarding products and services can be shaped through the negotiation of one or more agreements between a variety of parties.

> [0032] VDE is a cost-effective and efficient rights protection solution that

provides a unified, consistent system for securing and managing transaction processing. VDE can;

[0033] (a) audit and analyze the use of content,

[0034] (b) ensure that content is used only in authorized ways, and

[0035] (c) allow information regarding content usage to be used only in ways approved by content users.

[0053] VDE can enable a very broad variety of electronically **enforced commercial and societal agreements.** These agreements can include electronically implemented contracts, licenses, laws, regulations, and tax collection.

[0059] VDE Applications and Software

[0060] VDE is a secure system for regulating electronic conduct and commerce. Regulation is ensured by control information put in place by one or more parties. These parties may include content providers, electronic hardware manufacturers, financial service providers, or electronic "infrastructure" companies such as cable or telecommunications companies. The control information implements **"Rights Applications." Rights applications "run on" the "base software"** of the preferred embodiment. This base software serves as a secure, flexible, general purpose foundation that can accommodate many different rights applications, that is, many different business models and their respective participant requirements.

[0061] **A rights application under VDE is made up of special purpose pieces, each of which can correspond to one or more basic electronic processes needed for a rights protection environment These processes can be combined together like building blocks to create electronic agreements that can protect the rights, and may enforce fulfillment of the obligations, of electronic information users and providers. One or more providers of electronic information can easily combine selected building blocks to create a rights application that is unique to a specific content distribution model.** A group of these pieces can represent the capabilities needed to fulfill the agreement(s) between users and providers. These pieces accommodate many requirements of electronic commerce including:

[0062] **the distribution of permissions to use electronic information;**

[0063] **the persistence of the control information and sets of control information managing these permissions;**

[0064] configurable control set information that can be selected by users for use with such information;

[0065] data security and usage auditing of electronic information; and

[0066] a secure system for currency, compensation and debit management.

[0067] For electronic commerce, **a rights application**, under the preferred embodiment of the present invention, **can provide electronic enforcement of the business agreements between all participants.** Since different groups of components can be put together for different applications, the present invention can provide electronic control information for a wide variety of different products and markets. This means the present invention can provide a "unified," efficient, secure, and cost-effective system for electronic commerce and data security. This allows VDE to serve as a single standard for electronic rights protection, data security, and electronic currency and banking.

[0068] In a VDE, the separation between a rights application and its foundation permits the efficient selection of sets of control information that are appropriate for each of many different types of applications and uses. These control sets can reflect both rights of electronic community members, as well as obligations (such as providing a history of one's use of a product or paying taxes on one's electronic purchases). VDE flexibility allows its users to electronically implement and enforce common social and commercial ethics and practices. By providing a unified control system, the present invention supports a vast range of possible transaction related interests and concerns of individuals, communities, businesses, and governments. Due to its open design, VDE allows (normally under securely controlled circumstances) applications using technology independently created by users to be "added" to the system and used in conjunction with the foundation of the invention. In sum, VDE provides a system that can fairly reflect and **enforce agreements among parties**. It is a broad ranging and systematic solution that answers the pressing need for a secure, cost-effective, and fair electronic environment.

[0108] A significant facet of the present invention's ability to broadly support electronic commerce is its ability to securely manage independently delivered VDE component objects containing control information (normally in the form of VDE objects containing one or more methods, data, or load module VDE

components). This independently delivered control information can be integrated with senior and other pre-existing content control information to securely form derived control information using the negotiation mechanisms of the present invention **All requirements specified by this derived control information must be satisfied before VDE controlled content can be accessed or otherwise used.** This means that, for example, all load modules and any mediating data which are listed by the derived control information as required must be available and securely perform their required function. In combination with other aspects of the present invention, securely, independently delivered control components allow electronic commerce participants to freely stipulate their business requirements and trade offs. As a result, much as with traditional, non-electronic commerce, the present invention allows electronic commerce (through a progressive stipulation of various control requirements by VDE participants) to evolve into forms of business that are the most efficient, competitive and useful.

[0166] **VDE ensures that certain prerequisites necessary for a given transaction to occur are met.** This includes the secure execution of any required load modules and the availability of any required, associated data. For example, required load modules and data (e.g. in the form of a method) might specify that sufficient credit from an authorized source must be confirmed as available. It might further require certain one or more load modules execute as processes at an appropriate time to ensure that such credit will be used in order to pay for user use of the content. A certain content provider might, for example, require metering the number of copies made for distribution to employees of a given software program (a portion of the program might be maintained in encrypted form and require the presence of a VDE installation to run). This would require the execution of a metering method for copying of the property each time a copy was made for another employee. This same provider might also charge fees based on the total number of different properties licensed from them by the user and a metering history of their licensing of properties might be required to maintain this information.

[0390] Even if a consumer has a copy of a video program, **she cannot watch or copy the program unless she has "rules and controls" that authorize use of the program**. She can use the program only as permitted by the "rules and controls."

[0396] FIG. 1 also shows a publishing house 214. Publishing house 214 may act as a distributor for an author 206. The publishing house 214 may distribute rights to use "content" (such as computer software, electronic newspapers, the video produced by publishing house 214, audio, or any other data) to consumers such as office 210. The use rights may be defined by "rules and controls"

distributed by publishing house 216. Publishing house 216 may distribute these "rules and controls" with the content, but this is not necessary. **Because the content can be used only by consumers that have the appropriate "rules and controls," content and its associated "rules and controls" may be distributed at different times, in different ways, by different VDE participants. The ability of VDE to securely distribute and enforce "rules and controls" separately from the content they apply to provides great advantages.**

[0397] Use rights distributed by publishing house 214 may, for example, permit office 210 to make and distribute copies of the content to its employees. Office 210 may act as a redistributor by extending a "chain of handling and control" to its employees. The office 210 may add or modify "rules and controls" (consistent with the "rules and controls" it receives from publishing house 214) to provide office-internal control information and mechanisms. For example, office 210 may set a maximum usage budget for each individual user and/or group within the office, or it may permit only specified employees and/or groups to access certain information.

[0404] In the FIG. 2 example, a VDE content creator 102 creates "content." The content creator 102 may also specify "rules and controls" for distributing the content. These distribution-related "rules and controls" can specify who has permission to distribute the rights to use content, and how many users are allowed to use the content.

[0405] Arrow 104 shows the content creator 102 **sending the "rules and controls" associated with the content to a VDE rights distributor 106 ("distributor") over an electronic highway 108** (or by some other path such as an optical disk sent by a delivery service such as U.S. mail). The content can be distributed over the same or different path used to send the "rules and controls." The distributor 106 generates her own "rules and controls" that relate to usage of the content. The usage-related "rules and controls" may, for example, specify what a user can and can't do with the content and how much it costs to use the content. These usage-related "rules and controls" must be consistent with the "rules and controls" specified by content creator 102.

[0411] The virtual distribution environment 100 prevents use of protected information except as permitted by the "rules and controls" (control information). For example, the "rules and controls" shown in FIG. 2 may grant specific individuals or classes of content users 112 "permission" to use certain content. They may specify what kinds of content usage are permitted, and what kinds are not. They may specify how content usage is to be paid for and how much it costs. As another example, "rules and controls" may require

content usage information to be reported back to the distributor 106 and/or content creator 102.

[0419] "Rules and Contents" Can Be Separately Delivered

[0420] As mentioned above, virtual distribution environment 100 "associates" content with corresponding "rules and controls," and **prevents the content from being used or accessed unless a set of corresponding "rules and controls" is available.** The distributor 106 doesn't need to deliver content to control the content's distribution. The preferred embodiment can securely protect content by **protecting corresponding, usage enabling "rules and controls" against unauthorized distribution and use.**

[0421] In some examples, **"rules and controls" may travel with the content they apply to. Virtual distribution environment 100 also allows "rules and controls" to be delivered separately from content. Since no one can use or access protected content without "permission" from corresponding "rules and controls," the distributor 106 can control use of content that has already been (or will in the future be) delivered. "Rules and controls" may be delivered over a path different from the one used for content delivery. "Rules and controls" may also be delivered at some other time. The content creator 102 might deliver content to content user 112 over the electronic highway 108, or could make the content available to anyone on the highway.** Content may be used at the time it is delivered, or it may be stored for later use or reuse.

Thus, the Examiner asserts that a "licensing host" is the mechanism that communicates over the network (Internet or electronic highway) to the content/software and enforces the terms of the contract. Thus, the Examiner asserts that the "licensing host" can be the VDE itself or the VDE applications and software set forth above in paragraphs [0059-0067]. The VDE or the VDE applications and software communicate with the content/software over the "electronic highway 108". Since the VDE/distributors/"information utility" are also all connected over the electronic highway, then the mechanism for providing contract information and quotas and the mechanism for enforcing and allowing content to be used are all coupled to each other and all

communicate with each other through a network, i.e., the electronic highway shown in

Figures 1-2A.

The Examiner notes that appellant identifies appellant's invention in the

specification as having these qualities:

[0008] To enable software to be licensed on a fulfillment basis, the present invention provides a contract management mechanism. In one embodiment, information pertaining to one or more contracts is stored in a database, with each contract having a quota associated therewith, which specifies a quota of resources that can be consumed under the contract. In addition, each contract may have associated with it additional parameters (also referred to as terms or rules) which govern the manner in which the contract is to be fulfilled. These additional parameters, which may differ from contract to contract, may be applied by the management mechanism to control the fulfillment of the contract. Once information pertaining to a contract is stored, the management mechanism is ready to carry out inquiries and transactions under that contract.

[0009] In operation (assuming a software licensing implementation for the sake of example), the management mechanism receives an inquiry from a customer/beneficiary of a particular contract regarding licensing of a particular set of software under that contract. In addition to specifying the particular set of software, the inquiry may further specify other parameters, such as the duration of the desired license. **In general, all of the parameters of the inquiry (e.g. the particular set of software, the duration of the license, etc.) are freely selectable by the customer.**

[0010] In response to the inquiry, the management mechanism determines a licensing amount attributable to licensing of that particular set of software under the contract. This licensing amount may be determined based upon many factors, including but not limited to the set of software selected, the other parameters specified in the inquiry, and the terms or rules associated with the contract. Since the terms or rules may vary from contract to contract, the licensing amount for the same set of software with the same set of inquiry parameters may differ from contract to contract. Once the licensing amount is determined, and the customer commits to licensing the software, the management mechanism reduces the quota of the contract by the licensing amount, and allows the software to be used under the contract. Licensing of the software under the fulfillment contract is thus achieved. Using the same process, other sets of software may be licensed under the same contract.

Ginter also discloses:

[0111] VDE prevents many forms of unauthorized use of electronic information, by controlling and auditing (and other administration of use) electronically stored and/or disseminated information. This includes, for example, commercially distributed content, electronic currency, electronic credit, business transactions (such as EDI), confidential communications, and the like. **VDE can further be used to enable commercially provided electronic content to be made available to users in user defined portions, rather than constraining the user to use portions of content that were "predetermined" by a content creator and/or other provider for billing purposes.**

[0112] VDE, for example, can employ:

[0113] (1) Secure metering means for budgeting and/or auditing electronic content and/or appliance usage;

[0114] (2) Secure flexible means for enabling compensation and/or billing rates for content and/or appliance usage, including electronic credit and/or currency mechanisms for payment means;

[0115] (3) Secure distributed database means for storing control and usage related information (and employing validated compartmentalization and tagging schemes);

Appellant's primary argument appears to be that Ginter does not disclose license parameters being sent over a network from the management system to a licensing host that is coupled to the management system via the network. The Examiner respectfully disagrees with appellant's assertion.

Ginter discloses a network (Figure 1). Figure 2 discloses a content creator who creates "content" and "rules and controls" (parameters) for distributing the content [0404]. These "rules and controls" are sent to the VDE rights distributor (distributor) over an electronic highway [0405]. The distributor generates her own "rules and controls"

that relate to usage of the content, for example, specifying what a user can and cannot

do with content, how much it cost [0405-0406].

> [0405] Arrow 104 shows the content creator 102 sending the "rules and controls"
> associated with the content to a VDE rights distributor 106 ("distributor")
> over an electronic highway 108 (or by some other path such as an optical disk
> sent by a delivery service such as U.S. mail). The content can be distributed
> over the same or different path used to send the "rules and controls." The
> distributor 106 generates her own "rules and controls" that relate to usage of
> the content. The usage-related "rules and controls" may, for example, specify
> what a user can and can't do with the content and how much it costs to use the
> content. These usage-related "rules and controls" must be consistent with the
> "rules and controls" specified by content creator 102.

> [0406] Arrow 110 shows the distributor 106 distributing rights to use the
> content by sending the content's "rules and controls" to a content user 112
> such as a consumer. The content user 112 uses the content in accordance with
> the usage-related "rules and controls."

The distributor and the content creator may be the same person or they may be

different people [0408].

> [0408] The distributor 106 and the content creator 102 may be the same person,
> or they may be different people. For example, a musical performing group may
> act as both content creator 102 and distributor 106 by creating and
> distributing its own musical recordings. As another example, a publishing
> house may act as a distributor 106 to distribute rights to use works created by
> an author content creator 102. Content creators 102 may use a distributor 106
> to efficiently manage the financial end of content distribution.

Figure 1 (200) discloses an Information Utility (200) [0399-0401]. Figures 2 and

2A discloses a VDE Rights Distributor (106). The Examiner considers this to be the

functional equivalence of a management system since appellant's claimed subject

matter states that the management system is coupled to the client computer via a

network and [contains] information pertaining to the contract, the information

comprising quota parameters.

Appellant states that Ginter does not disclose that license parameters are sent over a network from a management system to a licensing host that is coupled to the management system via the network. Ginter discloses licensing parameters in paragraph [0161]. As stated above, Ginter discloses the functional equivalence of the management system coupled to the functional equivalent of a licensing host via a network.

B. The Features of Claims 23-49, 51, 55-64, 94-120, 122, and 126-135 are not disclosed, taught, or suggested by Ginter

Appellant's arguments are the same as set forth regarding claim 1. Therefore, the Examiner directs the Board to the discussion above as to these claims.

C. The Features of Claims 65-71 and 136 are not disclosed, taught, or suggested by Ginter

Appellant's arguments are the same as set forth regarding claim 1. Therefore, the Examiner directs the Board to the discussion above as to these claims.

D. The Features of Claims 18, 20-21, 89, and 91-92 are not disclosed, taught, or suggested by Ginter
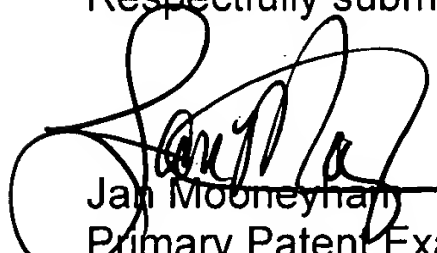
Appellant's arguments are the same as set forth regarding claim 1. Therefore, the Examiner directs the Board to the discussion above as to these claims.

E. The Features of Claims 50, 52-54, 121, and 123-125 are not disclosed, taught, or suggested by Ginter

Appellant's arguments are the same as set forth regarding claim 1. Therefore, the Examiner directs the Board to the discussion above as to these claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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